

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

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COZEN O’CONNOR, a professional corporation

Plaintiff,

v.

UNITED STATES DEPARTMENT OF  
TREASURY. Defendant.

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CIVIL ACTION NO.

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

1. This is an action under the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552, and the Administrative Procedure Act (“APA”), 5 U.S.C. §§ 701 et seq., for injunctive and other appropriate relief, and seeking the expedited processing and release of agency records requested by plaintiff from the United States Department of Treasury.

**JURISDICTION AND VENUE**

2. This Court has both subject matter jurisdiction over this action and personal jurisdiction over the parties pursuant to 5 U.S.C. §§ 552(a)(4)(B) and 552(a)(6)(E)(iii). This court also has jurisdiction over this action pursuant to 28 U.S.C. § 1331, 28 U.S.C. § 2201 and 5 U.S.C. §§ 701-706.

3. Venue lies in this district under 5 U.S.C. § 552(a)(4)(B), as this is the judicial district in which the complainant has its principal place of business, and from which its FOIA request was issued..

## **PARTIES**

4. Plaintiff Cozen O'Connor, a professional corporation, is a full-service law firm based in Philadelphia, Pennsylvania, with 537 attorneys practicing in the firm's 24 offices. The firm has 22 offices located across the United States and international offices in Toronto and London. Founded in 1968, Cozen O'Connor is ranked among the 100 largest law firms in the United States, serving business, insurance and private clients.

5. Defendant United States Department of the Treasury is a department of the executive branch of the United States Government, and is an agency within the meaning of 5 U.S.C. § 552(f).

## **FACTUAL ALLEGATIONS**

6. Plaintiff Cozen O'Connor, through its counsel J. Scott Tarbutton, Esq. of its Philadelphia office, submitted letter requests under the Freedom of Information Act ("FOIA") to the Department of the Treasury on July 30, 2003, in pursuit of documents believed to be necessary in assisting the firm prosecute various civil litigation claims against individuals, organizations and nations it believes were responsible for assisting al Qaida with the attacks on America on September 11, 2001.

7. The request generally pertained to the following topics:

- a) Designation of foreign states as State Sponsors of Terrorism pursuant to the Export Administration Act of 1979 and the Foreign Assistance Act of 1961;
- b) Designation of groups and/or organizations that engage in terrorist activity or retain the capability and intent to engage in terrorist activity or terrorism as Foreign Terrorist Organizations ("FTO") pursuant to Section

219 of the Immigration and Nationality Act, as amended by the USA PATRIOT Act;

- c) Designation of individuals and organizations that provide material support or financial or other services to, or associate with, designated terrorists, pursuant to Executive Order 13224; and
- d) Identification of assets belonging to: (i) State Sponsors of Terrorism; (ii) Foreign Terrorist Organizations; and (iii) Executive Order 13224 designees as identified within the requests.

8. Testimony by R. Richard Newcomb, Director of the Office of Foreign Assets Control of the Department of the Treasury, before the Senate Committee on Governmental Affairs on July 31, 2003, confirmed that the Department of the Treasury possesses documentation and information directly responsive to plaintiff's FOIA request relating to individuals and entities designated under Executive Order 13224:

Chairman COLLINS: I assume that when you recommend the listing of an entity [for designation under Executive Order 13224], that is based on an investigation that you have conducted and that there is a sound factual record for the listing of the entity, that is why you brought that recommendation forward. Is that correct?

Mr. NEWCOMB: That is correct. When we have a target we wish to designate, we develop evidence so that, should a designation happen, we are able to sustain a challenge to that in Federal Court. So we do develop an evidentiary package as the basis for the recommendation.

Terrorism Financing: Origination, Organization and Prevention -  
- Hearing Before the United States Senate Committee on  
Governmental Affairs, 108th Cong. 14 (2003) (testimony of R.  
Richard. Newcomb).

9. Plaintiff served its initial FOIA request upon the Department of the Treasury on July 30, 2003. Plaintiff's request was in conformance with the requirements for such requests set forth in defendant's regulations.

10. By letter dated August 26, 2003, the Department of the Treasury acknowledged receipt of plaintiff's FOIA request, labeling it Case No. 2003-08-003.

11. By letter dated October 17, 2003, plaintiff sent an additional letter to the Department of the Treasury asking to be provided with a date by which the FOIA request would be processed.

12. On October 27, 2003, Treasury representative Cawana Pearson responded via electronic mail in which she requested that Juan Zarate and Richard Newcomb advise her as to the status of the request. However, no such response was ever transmitted to Cozen O'Connor.

13. By letter dated February 4, 2004, Cozen O'Connor repeated its request for a status report.

14. On February 17, 2004, the Department of the Treasury acknowledged receipt of the February 4 letter, but provided no substantive information about the status of the request.

15. By letter dated May 27, 2004, Cozen O'Connor repeated its request for a status report.

16. On June 8, 2004, the Department of the Treasury acknowledged receipt of the May 27 letter, but provided no substantive information about the status of the request.

17. By letter dated July 15, 2004, Cozen O'Connor repeated its request for a status report. There was no response.

18. By letter dated January 17, 2005, Cozen O'Connor wrote to the Department of the Treasury suggesting a prioritization list for the parties contained within its original request. Plaintiff further requested the production of a *Vaughn* Index and segregability analysis.

19. On January 25, 2005, the Department of the Treasury acknowledged receipt of the January 17 letter, but provided no substantive information about the status of the request.

20. Letters suggesting additional priority searches similar to the January 17 letter were sent to the Department of the Treasury on February 16, May 17, May 18, and May 23, 2005. None elicited a response.

21. As plaintiff's FOIA request specifically seeks records in the possession of the Department of the Treasury relating to the designation of entities and individuals under Executive Order 13224, Mr. Newcomb's testimony before the Senate Committee on Government Affairs confirms that the Department of the Treasury possesses documentation and information directly responsive to plaintiff's FOIA request.

22. More than twenty working days have passed since the Department of the Treasury received plaintiff's initial request for documents.

23. The Department of the Treasury have failed to provide Cozen O'Connor with a determination as required by law, nor has the Department produced any materials in response to plaintiff's request.

24. Plaintiff has a statutory right to the records that it seeks, and there is no legal basis for the Department of the Treasury's refusal to disclose them.

### **FIRST CAUSE OF ACTION**

#### **VIOLATION OF THE FREEDOM OF INFORMATION ACT FOR WRONGFUL WITHHOLDING OF AGENCY RECORDS**

25. Plaintiff repeats and realleges paragraphs 1-24

26. Defendant has wrongfully withheld agency records requested by plaintiff.

27. Plaintiff has exhausted the applicable administrative remedies with respect to defendant's wrongful withholding of the requested records.

28. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

## **SECOND CAUSE OF ACTION**

### **VIOLATION OF THE ADMINISTRATIVE PROCEDURES ACT FOR WRONGFUL WITHHOLDING OF AGENCY RECORDS**

29. Plaintiff repeats and realleges paragraphs 1-24.
30. Defendant has wrongfully withheld agency records requested by plaintiff.
31. Defendant's failure to timely respond to plaintiff's FOIA request constitutes agency action unlawfully withheld and unreasonably delayed, in violation of the APA.
32. Defendant's failure to timely respond is arbitrary, capricious, an abuse of discretion, not in accordance with law and without observance of procedure required by law, all in violation of the APA.
33. Plaintiff is entitled to injunctive relief with respect to the release and disclosure of the requested documents.

**WHEREFORE**, Plaintiff prays that this Court:

1. Declare that Defendant's withholding of the requested records is unlawful under FOIA;
2. Order Defendant to make the requested materials immediately available to Plaintiff in their entirety;
3. Provide for expeditious proceedings in this action pursuant to 28 U.S.C. § 1657;
4. Maintain jurisdiction over this action until Defendant is in compliance with FOIA, APA and every order of this Court;
5. Award Plaintiff its costs and reasonable attorneys' fees pursuant to 5 U.S.C. §552(a)(4)(e);
6. Grant such other relief as this Court may deem just and proper.

**COZEN O'CONNOR**

By:

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Dated: August 12, 2005

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